

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Custom Computers d.b.a. Winchester Wireless)	File No.: EB-FIELDNER-13-00009170
)	NAL/Acct. No.: 201432340001
Operator of Wireless Internet Service Provider)	FRN: 0023200199
Winchester, VA)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: March 10, 2014

Released: March 11, 2014

By the District Director, Columbia Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order (NAL), we find that Custom Computers d.b.a. Winchester Wireless (Winchester Wireless), a Wireless Internet Service Provider in Winchester, Virginia, apparently willfully violated Section 301 of the Communications Act of 1934, as amended (Act),¹ and Section 15.1(b) of the Commission's rules (Rules)² by operating intentional radiators not in accordance with Part 15 of the Rules³ and without a license. We conclude that Winchester Wireless is apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000). In addition, we direct Winchester Wireless to submit, no later than thirty (30) calendar days from the date of this NAL, a statement signed under penalty of perjury stating that it is currently operating its Wireless Internet Service in compliance with FCC rules and applicable authorizations.

II. BACKGROUND

2. Part 15 of the Rules allows devices employing relatively low-level radiofrequency (RF) signals to be operated without individual licenses, as long as their operation causes no harmful interference to licensed services and the devices do not generate emissions or field strength levels greater than a specified limit.⁴ Such devices must be authorized and operated in accordance with the Part 15 Rules.⁵ For example, Section 15.1(c) of the Rules provides that intentional radiators must operate consistent with the terms of their equipment authorizations.⁶ Additionally, operating a Part 15 device in a

¹ 47 U.S.C. §§ 301, 302a(b).

² 47 C.F.R. §§ 15.1(b), (c), 15.204(a).

³ 47 C.F.R. §§ 15.1 *et seq.*

⁴ *Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, First Report and Order, 4 FCC Rcd 3493 (1989).

⁵ 47 C.F.R. §§ 15.1(a), 15.5.

⁶ *See* 47 C.F.R. § 15.1(c). Section 15.201(b) of the Rules provides that all intentional radiators operating under Part 15 of the Rules shall be certificated by the Commission. 47 C.F.R. § 15.201(b). The Commission issues equipment authorizations for such devices, setting forth the relevant conditions to the grant.

manner that is inconsistent with the Part 15 Rules requires a license pursuant to Section 301 of the Act. Such operation without a license violates Section 301 of the Act.⁷

3. On May 10, 2011, in response to a complaint, an agent from the Enforcement Bureau's Columbia Office (Columbia Office) inspected a transmitter device operated by Winchester Wireless on the roof of a residence at Wardensville Grade in Winchester, Virginia. During the inspection, the agent determined that the device was a Motorola Canopy transmitter⁸ and that the transmitter was connected to two external RF Linx 900 MHz amplifiers that were individually fed into two antennas. When the agent later interviewed David Williamson, the owner of Winchester Wireless, at Winchester Wireless's main office, Mr. Williamson admitted to using the amplifiers. The agent subsequently reviewed the FCC certification for the Motorola Canopy System, which indicated that the Motorola Canopy System is not certified for use with external amplifiers.⁹

4. On August 11, 2011, the Columbia Office issued a Notice of Unlicensed Operation to Winchester Wireless regarding its unauthorized use of the external amplifiers at Wardensville Grade.¹⁰ The 2011 Notice directed Winchester Wireless to cease operating any transmitting devices until its system could be brought into compliance with Part 15 of the Rules. The 2011 Notice also warned Winchester Wireless that continued unauthorized operation could result in severe penalties, including, but not limited to, substantial monetary fines. In addition, the 2011 Notice directed Winchester Wireless to describe the steps it planned to take to ensure that its operation at Wardensville Grade, as well as other locations, complied with Part 15 of the Rules. On August 29, 2011, Mr. Williamson responded to the 2011 Notice and reported that the amplifiers had been removed from the Wardensville Grade location; Mr. Williamson did not provide any information regarding Winchester Wireless's operations at other locations.¹¹

5. On May 29, 2013, in response to two additional complaints, an agent from the Columbia Office inspected two transmitter sites operated by Winchester Wireless. The transmitter sites were located at residences on Pepper Lane in Winchester, Virginia, and Shawnee Trail, also in Winchester, Virginia.¹² At both locations, the agent observed signals emanating in the 902-928 MHz band. In addition, the agent observed the same Motorola Canopy System and RF Linx equipment that he had observed during the 2011 inspection.¹³ On July 29, 2013, the Columbia Office issued a Notice of Unlicensed Operation to Winchester Wireless regarding its continued unauthorized use of external amplifiers.¹⁴ On July 31, 2013, Winchester

⁷ 47 C.F.R. § 15.1(b).

⁸ The transmitter was a Motorola Canopy, Model # 9000APC AP, FCC ID ABZ89FC5809.

⁹ See FCC ID ABZ89FC5809.

¹⁰ *Custom Computers d.b.a. Winchester Wireless*, Notice of Unlicensed Operation (Enf. Bur., Columbia Office August 11, 2011) (on file in EB-FIELDNER-13-00009170) (2011 Notice).

¹¹ E-mail from David Williamson, owner of Winchester Wireless, to Shannon Gunter, FCC Agent, Columbia Office (August 29, 2011) (on file in EB-FIELDNER-13-00009170).

¹² Winchester Wireless previously identified these transmitter sites in an e-mail to the FCC agent. *Id.* The agent also inspected a third site where use of an amplifier could not be confirmed.

¹³ The transmitters and amplifiers observed by the agent during the inspections on May 29, 2013 were mounted on towers and masts that were not accessible by the agent.

¹⁴ *Custom Computers d.b.a. Winchester Wireless*, Notice of Unlicensed Operation (July 29, 2013) (on file in EB-FIELDNER-13-00009170) (2013 Notice).

Wireless responded to the 2013 Notice indicating that it would inspect the two transmitter sites for compliance with the Part 15 Rules.¹⁵

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹⁶ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,¹⁸ and the Commission has so interpreted the term in the Section 503(b) context.¹⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.²⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.²¹

A. Unlicensed Operations

7. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.²² Part 15 of the Rules,²³ however, sets forth conditions under which intentional radiators may operate without an individual license. Pursuant to Section 15.1(b) of the Rules, “the operation of an intentional or unintentional radiator that is not in accordance with the regulations in [Part 15] must be licensed pursuant to the provisions of Section 301 of the Communications

¹⁵ E-mail from David Williamson, Owner of Winchester Wireless, to Shannon Gunter, FCC Agent, Columbia Office (Enf. Bur., Columbia Office July 31, 2013) (on file in EB-FIELDNER-13-00009170).

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 U.S.C. § 312(f)(1).

¹⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

¹⁹ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

²⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

²¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

²² 47 U.S.C. § 301.

²³ See 47 C.F.R. §§ 15.1 *et seq.*

Act. . . .”²⁴ Thus, if an intentional radiator fails to comply with all of the applicable conditions set forth in Part 15 of the Rules, it is no longer covered by the unlicensed provisions of those Rules and must obtain an individual license pursuant to Section 301 of the Act.

8. On May 29, 2013, as described above, an agent from the Columbia Office observed Winchester Wireless operate its Motorola Canopy Systems with external amplifiers at two different locations. The Motorola Canopy System is not certified to operate with an external amplifier. Therefore, Winchester Wireless’s operations did not comply with the device’s equipment authorization or Part 15 requirements and thus required a license. According to Commission records, Winchester Wireless does not hold a license to operate in the 900 MHz band in Winchester, Virginia. Thus, based on the evidence before us, we find that Winchester Wireless apparently willfully violated Section 301 of the Act and Section 15.1(b) of the Rules by operating unlicensed radio transmitters on May 29, 2013.

B. Proposed Forfeiture and Reporting Requirement

9. Pursuant to the Commission’s *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.²⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²⁶ Because Winchester Wireless operated its Motorola Canopy system with unauthorized amplifiers at two separate locations, we propose a \$10,000 forfeiture for operation without an instrument of authorization at each location.

10. In addition, Winchester Wireless had the same type of violation less than two years earlier. Indeed, the *2011 Notice* expressly warned that the equipment certification for the Motorola Canopy System did not authorize the use of such amplifiers. Winchester Wireless’s actions demonstrate a deliberate disregard for the Commission’s requirements and we therefore find a \$5,000 upward adjustment in the forfeiture is warranted.²⁷ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Winchester Wireless is apparently liable for a forfeiture in the amount of \$25,000 for violations of Section 301 of the Act and Section 15.1(b) of the Rules. We caution Winchester Wireless that we may impose larger forfeitures in future cases if the circumstances warrant or if our current approach does not serve as a sufficient deterrent.

11. We further order Winchester Wireless to submit a written statement, pursuant to Section 1.16 of the Rules, signed under penalty of perjury by an officer or director of Winchester Wireless, stating that Winchester Wireless is now operating all of its Part 15 devices in compliance with their equipment

²⁴ 47 C.F.R. § 15.1(b).

²⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²⁶ 47 U.S.C. § 503(b)(2)(E).

²⁷ See *Argos Net, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 2786 (San Juan Office, Enf. Bur. 2012) (proposing total forfeiture in the amount of \$25,000 for violations of Section 301 of the Act and Section 15.1(b) of the Rules, which included \$20,000 for operation of two unlicensed devices not in accordance with Part 15 of the Rules plus a \$5,000 upward adjustment for continuing the unlicensed operation after receiving a warning) (*NAL*), *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126 (Enf. Bur. 2013) (affirming findings in *NAL*, but reducing the forfeiture amount based on the company’s history of compliance with the Commission’s rules).

authorizations and the Rules. This statement must be provided to the Columbia Office at the address listed in paragraph 14 within thirty (30) calendar days of the release date of this NAL.

C. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Custom Computers d.b.a. Winchester Wireless is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act and Section 15.1(b) of the Commission's rules.²⁸

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Custom Computers d.b.a. Winchester Wireless **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. **IT IS FURTHER ORDERED** that Custom Computers d.b.a. Winchester Wireless **SHALL SUBMIT** a written statement, as described in paragraph 11, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order. The statement must be mailed to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, Maryland, 21046. Winchester Wireless shall also e-mail the written statement to NER-Response@fcc.gov.

15. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Winchester Wireless shall also send electronic notification on the date said payment is made to NER-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁹ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Any request

²⁸ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 15.1(b).

²⁹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁰ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.³¹ Mail the written statement to Federal Communications Commission, Enforcement Bureau, Northeast Region, Columbia Office, 9200 Farm House Lane, Columbia, MD, 21046, and include the NAL/Acct. No. referenced in the caption. Custom Computers d.b.a. Winchester Wireless also shall e-mail the written response to NER-Response@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order shall be sent by both Certified Mail, Return Receipt Requested, and first class mail to Custom Computers d.b.a. Winchester Wireless at 2979 Valley Avenue, Winchester, Virginia, 22601.

FEDERAL COMMUNICATIONS COMMISSION

Salomon Satche
District Director
Columbia Office
Northeast Region
Enforcement Bureau

³⁰ See 47 C.F.R. § 1.1914.

³¹ 47 C.F.R. §§ 1.16, 1.80(f)(3).